

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 8658 of 2019 (O&M)

Date of Decision:03.02.2022

Suresh Kumar and others

....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present:- Ms. Anil Rathee, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for respondents No.1, 3 and 4.

Mr. Amar Vivek Aggarwal, Advocate and
Mr. Shiva Parashar, Advocate for HUDA.

(The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

1. The controversy involved in the matter at hand revolves around the applicability of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 onto the facts of the case wherein the award under section 11 of The Land Acquisition Act 1894 was announced on 22.01.1992 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioners, the possession of the land in question is not taken by the State. The compensation has been received by their father who was the owner of land at the time of issuance of notification under section 4 of 1894 Act. Therefore, only ground based on which the lapsing of

acquisition proceedings has been claimed is inaction on the part of the State to take physical possession of the land in question.

2. So far as, the lapsing of acquisition proceedings sought under section 24(2) of Act of 2013 is concerned, the controversy cropped up around interpretation of Section 24(2) of Act of 2013 was put at rest by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496*** thereby laying down principles for declaring the acquisition deemed to have been lapsed under section 24(2) of Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting section 24(2) of Act of 2013, however for the purpose of deciding the matter at hand, the reference to the concluding paragraph of the judgment would be suffice and same is reproduced herein below:-

‘....1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of

compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. *In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.*

6. *The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).*

7. *The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).*

8. *The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

9. *Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred*

claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition’.

3. The sum and substance of the judgment can be summarized in the following manner for more clarity on the principles laid down by the Constitution Bench:-

- (a) In all those cases wherein the acquisition process had been initiated but the award has not been announced under section 11 of the Act of 1894, on the date of commencement of the Act of 2013 i.e. 01.01.2014, there is no lapse of proceedings and the same will continue, however, with the rider that the compensation has to be determined under the provisions of Act of 2013. All those cases wherein the award under section 11 of the Act of 1894 has been announced prior to commencement of the Act of 2013, the provisions of the Act of 2013 would have no bearing or application and the proceedings will continue in respect of those cases, as if, the Act of 1894 has not been repealed.
- (b) The word ‘or’ used in between the both the contingencies of section 24(2) of the Act of 2013 is to be read as ‘***nor***’ or as ‘***and***’ which means that to seek lapsing of the acquisition proceedings both the contingencies must be fulfilled. Meaning thereby, that if the possession had been taken but the compensation was not received, there would be no lapse. Similarly, if compensation has

been accepted but the possession has not been taken, there would be no lapsing. *(reference to para 99 and 363(2) of the judgment)*

- (c) As far as the aspect of compensation for the land acquired is concerned, the Hon'ble Supreme Court of India has categorically observed that the expression paid in the main part of section 24(2) of the Act of 2013 does not include a deposit of compensation in court. What is required to be proved is that the compensation amount was tendered which has been explained in *para 203* that the tendering of the amount would mean that the amount is made available to the landowner and that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalized for the default in making the payment. While referring to section 31(1), 31(2), 34 of the Act of 1894 and comparing them with the para materia provisions i.e. section 71 and 80 of the Act of 2013, the Hon'ble Apex Court has clarified that the only consequence of non-payment of compensation is to make the payment of interest as per section 34 of the Act of 1894. Even the Hon'ble SC has further clarified that once the payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Hon'ble SC has further observed that if a landowner

has filed the reference for higher compensation he cannot claim that he was not paid the amount.

- (d) While reading the proviso to Section 24 of the Act of 2013 to be part of section 24(2) of the Act of 2013, the Hon'ble Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the landowners as on the date of notification for land acquisition under section 4 of the Act of 1894. Regarding the deposit, it has been clarified in *para 242* of the judgment that for the higher compensation to follow, the money should not have been deposited with the Land Acquisition Collector or in the treasury or in the Court with respect to majority of land holdings, meaning thereby if it was deposited in any of the three modes with respect to majority of holdings, the higher compensation will not follow, but interest under section 34 of the Act of 1894 would be the consequence.
- (e) As regards the mode of taking possession, the Hon'ble Supreme Court had clarified that drawing of inquest report/ memorandum would mean that physical possession has been taken. The law with regard to vesting of land has once again be reiterated to hold that once the possession has been taken under section 16 of the Act of 1894, the land vest in the State and there cannot be any divesting or lapsing.

- (f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of section 24(2) cannot be invoked.
- (g) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the umbrella protection of section 24(2) of the Act of 2013 cannot be invoke as it does not revive stale and time barred claims.
- (h) In para 337, the Hon'ble Court has made it clear that the provision of section 24(2) of the Act of 2013 is meant to be invoked by the beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of section 24(2) of the Act of 2013.

4. As per the case put forth by the petitioners, they are owner in possession of the land comprising in Khasra no. 12//2/2/1, 12//2/2/2, 12//9/1, 13//5/2, 13//6/3, 13//13, 13//14/1, 13//14/2, 13//15/1, 13//16/1, 13//17 and 13//18/1, total measuring 10 Kanals 19 marlas situated in the revenue estate of Village Naharpur Rupa, Tehsil and District Gurugram. As per the case set up by the petitioners, the said land is the part of fully developed colony. The said land was acquired by the State of Haryana vide notifications dated 30.01.1989 and 05.01.1990 issued under section 4 and section 6 of the Land

Acquisition Act, 1894, followed by award dated 22.01.1992 for the public purpose namely, for Commercial, Industrial sector 33-34 at Gurgaon. It is the case of the petitioners that despite having acquired the land in question, the State has failed to take possession of the land and till date the petitioners are in actual physical possession of the land in question. Further it has been contended that the petitioners have received compensation. In view of the aforesaid, prayer has been made to declare the acquisition proceedings having been lapsed under section 24(2) of Act of 2013. Besides, the reference has been made to the civil writ petitions filed by other landowners way back in the year 1990 and on the strength thereof, the petitioners have tried to plead the case of discrimination.

5. Per contra Mr. Ankur Mittal, Ld. Additional Advocate General Haryana appearing for the State of Haryana submits that the contention of the petitioners of being in the possession of the land in question is devoid of merit as the possession of the land in question of the petitioners was taken at the time of announcement of award itself by recording Rapat Roznamcha no. 309 dated 26.01.1992 as admittedly the petitioners did not challenge the acquisition. Further, he contends that the compensation for land in question was duly tendered i.e., was made available to the petitioners and by making reference to the admission made in the writ petition that the amount of compensation has already been received by their father who was the recorded owner at the time of issuance of notification under section 4 of Act of 1894. Therefore, it is his contention that none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled as possession of the land stands duly taken and the obligation of the State to pay the

compensation stands discharged with the tender as well as payment of compensation, hence, the present petition merits dismissal.

6. As far as, the plea of release being sought by contending parity as regards the other landowners is concerned, Mr. Mittal has vehemently opposed the plea by contending that the provisions of section 24(2) of Act of 2013 does not provide a platform to the landowner(s) to agitate a plea which otherwise, he/ she is not permitted under law owing to be hit with delay and laches. Even otherwise, after the pronouncement of Indore Development Authority (Supra), the prayer for release of land is not permitted as the State Government is precluded from exercising the option of withdrawal of acquisition under section 48 of 1894 Act. Moreover, it is well settled that to plead discrimination it is required to establish that both the persons are not only similarly placed but identically placed. Applying this test to the facts of the present case, even if the delay and laches are ignored on the part of the petitioner, the inevitable conclusion would be that the petitioners are not at all identically placed with the ones whose references have been given to secure the release of land as in all those cases, the writ petitions were filed way back in the year 1990 whereas in the case at hand, the petitioners approached this Court for the first time in the year 2019. Not only this but another aspect which comes in the way of the petitioners is that the releases of the land in all the cases whose reference has been given, is of an era when there was no authoritative pronouncement that recording of panchnama/ Rapat Roznamcha is enough to construe that physical possession has been taken and thus, the State had exercised the powers vested in it under section 48 of 1894 Act. But after the pronouncement of Indore Development

Authority (Supra) and the position of law having been cleared, it is unambiguously clear that recording of Rapat Roznamcha is sufficient to mean that physical possession has been taken and thus, precludes the State Government to exercise the powers vested under section 48 of 1894 Act. He has further submitted that even if the petitioners have chosen to take the additional plea of release of their land by relying upon the release of land in the referred petitions while filing the petition under section 24(2) of Act of 2013, still same cannot be gone into as this prayer of the petitioners is clearly hit with delay and laches. The plea of discrimination is also required to be taken immediately as the delay occurred on the part of landowner to take this plea clearly results into acquiescence/ waiver of interest which are sufficient to negate this plea.

7. After having perused the pleadings of both the contesting parties and recording their contentions, we have no hesitation to conclude that the matter at hand is squarely covered by the principles laid down by the Hon'ble Supreme Court of India in the case of Indore Development Authority (supra) and the prayer of the petitioner claiming lapsing of acquisition proceedings deserves dismissal. Though the petitioners have contended that actual physical possession of the land in question is still with them however, the said averment is not tenable in view of the interpretation of '*physical possession*' made by the Hon'ble Apex Court in Indore Development Authority (Supra) wherein the Hon'ble Court has categorically held that the word possession used in the Act of 1894 has same meaning as that of physical possession used in Section 24 (2) of Act of 2013. When the State Government acquires the land and draws memorandum of taking

possession which in the present case is by recording Rapat Roznamcha no. 192 dated 20.01.2004, that amounts to taking of the physical possession of the land and once the possession is taken, there is absolute vesting of the land in the State. Thereafter even if the landowner retains the possession of the land, he is a trespasser, and such possession of trespasser enures for his benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha no. 309 dated 26.01.1992, therefore, physical possession of the land is with the State. The plea of the petitioners that they are in physical possession of the land is thus, hereby rejected. If at all possession has been retained by them, it is only as trespassers and not as owners.

8. An important fallout of the specific finding of possession having been taken and the land having vested in the State is that after such vesting of land, the challenge to the acquisition proceedings on the ground other than that of Section 24(2) of Act of 2013 is hopelessly delayed. It is trite law that neither there can be divesting of the land once it has vested in the State nor power under section 48 of Act of 1894 can be exercised after taking of due possession of the acquired land. Further there are catena of judgments by the Hon'ble Supreme Court of India that acquisition cannot be challenged after the announcement of award and vesting of the land in the State. Therefore, we are in complete agreement with the contention raised by Mr. Mittal that since the Supreme Court in Indore Development Authority (Supra) has given authoritative pronouncement on the issue that drawing of Panchnama amounts to taking of physical possession of the land and that once

possession is taken land gets vested in the State; the challenge to the acquisition proceedings at the instance of the petitioners is not maintainable.

9. In view of aforesaid, even the plea of discrimination has no legs to stand as such plea is based on the benefit given to such landowners who has approached this Court at an earlier point of time laying challenge to the acquisition proceedings. It is trite law that the benefit granted to a person who approached the Court of law at earlier point of time does not give a cause of action to a person who had chosen to accept the fate of the acquisition without assailing it. In this regard Mr. Mittal has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***V. Chandrasekaran and Anr. V. Administrative Officer and others 2012 (4) RCR (Civil) 588*** wherein the Apex Court has categorically held as follows:-

'...15. Therefore, the law on the issue can be summarised to state that, in the event that the person interested has not filed objections in response to a notice issued under Section 5-A, and has not challenged the acquisition proceedings, the quashing of the declaration issued under Section 6 in some other case, would not enure any benefit to such person. More so, where the possession of land has already been taken, and such land stands vested in the State, free from all encumbrances as provided under Sections 16 and 17(2) of the Act, prior to the date of decision of the Court quashing the declaration in toto, no benefit can be taken by him. Where a party has not filed objections to the notice issued under Section 5-A, the declaration qua such persons is generally neither quashed, nor does it stand vitiated qua him, by any error of law warranting interference. There is also another view with respect to this matter, which is that, in case the said land has been acquired for a Scheme, which does not fall within the ambit of "public purpose" then, in such a case, it would not be a case of acquisition under the Act, instead, it would amount to colourable exercise of power...'

10. The aforesaid proposition of law is squarely applicable on the case at hand and thus, the petitioners are precluded from laying challenge to the acquisition proceedings based on the benefit accrued to other persons who

had chosen to approach the Court at appropriate time. Further the plea of discrimination also deserves to be rejected as the petitioners have failed to plead as to how they are identically placed with those landowner(s) whose land has been released from acquisition proceedings. Thus, plea of discrimination and challenge to acquisition proceedings is hereby rejected.

11. Now coming on to the second limb of Section 24(2) of Act of 2013, admittedly compensation has been received by the petitioners. The receipt of compensation amount shows that the compensation amount was tendered and there has been no inaction on part of the State authorities in discharging its obligation as regards payment of compensation. Once it is so, the second contingency prescribed in section 24(2) of Act of 2013 also goes and thus, as none of the contingencies prescribed in section 24(2) of Act of 2013 is fulfilled, the deeming fiction of lapsing provided under section 24(2) of Act of 2013 cannot be invoked.

12. Mr. Ankur Mittal on the strength of the facts pleaded in the written statement has vehemently contended that the State acquired the land for the public purpose public purpose for utilization of land for development of Commercial Industrial area, sector 33-34 at Gurgaon. The public purpose is achieved by drawing/approving the lay out plan. As per the lay out plan prepared for the acquisition in question, the land in question is very much essential to achieve the public purpose and it affects the planning of 24 mtr road, parking, spare part shop, SCO, nursing home etc. We have considered this part of argument raised by the respondents and we are in complete agreement with the same as this is an important factor to be kept in mind while dealing with the case arising out of the acquisition of land to achieve

the public purpose and it is the state/its authority who is in the best position to decide about utilization of the land acquired, after it having been vested in State.

13. As a sequel of the above discussion and in view of law summarized in para 363 of Indore Development Authority (supra), specifically after having recorded that in the case in hand, the physical possession of the land in question having been taken, the obligation for payment of compensation stands discharged and also considering that the land in question is very much essential to achieve the public purpose, we have no hesitation to hold that in the instant case, the state has fully discharged its obligation qua both the contingencies occurring in section 24 (2) of 2013 Act and it being so, the present petition merits dismissal and hence, the instant petition is dismissed.

14. Having dismissed the main writ petition, all pending applications, if any also meet the same fate. The writ petition is dismissed. Status quo if any stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No